

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

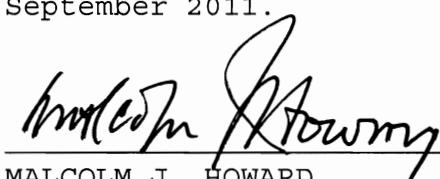
No. 4:09-CR-106-1H

UNITED STATES OF AMERICA)
)
V.) ORDER
)
JOHNNY EDWARD BYRD, JR.)

Before the court are motions to withdraw guilty pleas to Counts One and Two of the Indictment filed by defendant Johnny Edward Byrd, Jr., as well as the Government's motion to dismiss the Counts One and Two of the Indictment. The Defendant moves to withdraw his guilty pleas to Counts One and Two of the Indictment, arguing that United States v. Simmons, No. 08-4475, slip op. (4th Cir. Aug. 17, 2011) (en banc), establishes actual innocence of the offenses charged in these counts (possession of a firearm and ammunition by a convicted felon in violation of 18 U.S.C. § 922(g) (1)) because none of his prior convictions are for an offense "punishable by a term of imprisonment exceeding one year" under North Carolina law.

For good cause shown and with the Government's consent, the court GRANTS defendant's motion to withdraw his guilty pleas to Counts One and Two of the Indictment. The court further GRANTS the government's motion and hereby DISMISSES the Counts One and Two of the Indictment.

This 16th day of September 2011.



MALCOLM J. HOWARD
Senior United States District Judge